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Introduced and read first time: February 5, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Judicial Sentencing Restoration Act - Nonviolent Drug Offenses**

3 FOR the purpose of repealing certain penalty provisions which provide for certain
4 mandatory minimum sentences for certain nonviolent drug-related offenses;
5 altering certain penalties for certain offenses; repealing certain provisions
6 pertaining to penalties for certain subsequent offenders; providing for the
7 application of this Act; and generally relating to the repeal of mandatory
8 minimum sentences for certain nonviolent drug-related offenses.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 286 and 286D
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 2000 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 27 - Crimes and Punishments**

17 286.

18 (a) Except as authorized by this subheading, it is unlawful for any person:

19 (1) To manufacture, distribute, or dispense, or to possess a controlled
20 dangerous substance in sufficient quantity to reasonably indicate under all
21 circumstances an intent to manufacture, distribute, or dispense, a controlled
22 dangerous substance;

23 (2) To create, distribute, or possess with intent to distribute, a
24 counterfeit controlled dangerous substance;

25 (3) To manufacture, distribute, or possess any punch, die, plate, stone, or
26 any other equipment which is designed to print, imprint, or reproduce the trademark,

1 trade name, or other identifying mark, imprint, or device of another or any likeness of
2 any of the foregoing upon any drug or container or labeling thereof so as to render the
3 drug a counterfeit controlled dangerous substance;

4 (4) To manufacture, distribute, or possess any machine, equipment,
5 instrument, implement, device, or combination thereof which is adopted for the
6 production of controlled dangerous substances under circumstances which reasonably
7 indicate an intention to use such item or combination thereof to produce, sell, or
8 dispense any controlled dangerous substance in violation of the provisions of this
9 subheading;

10 (5) To keep or maintain any common nuisance which means any dwelling
11 house, apartment, building, vehicle, vessel, aircraft, or any place whatever which is
12 resorted to by drug abusers for purposes of illegally administering controlled
13 dangerous substances or which is used for the illegal manufacture, distribution,
14 dispensing, storage or concealment of controlled dangerous substances or controlled
15 paraphernalia, as defined in § 287(d) of this subheading; or

16 (6) To possess, pass, utter, make, or manufacture a false, forged, or
17 altered prescription or prescriptions for a controlled dangerous substance with the
18 intent to distribute the controlled dangerous substance. Information communicated to
19 an authorized prescriber in an effort to obtain a controlled dangerous substance in
20 violation of the provisions of this item shall not be deemed a privileged
21 communication.

22 (b) Any person who violates any of the provisions of subsection (a) of this
23 section with respect to:

24 (1) A substance classified in Schedules I or II which is a narcotic drug is
25 guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine
26 of not more than \$25,000, or both.

27 (2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine,
28 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in
29 Schedule II, or n-ethyl-1-phenylcyclohexylamine,
30 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or
31 lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and is subject
32 to imprisonment for not more than 20 years, or a fine of not more than \$20,000, or
33 both.

34 (3) Any other controlled dangerous substance classified in Schedule I, II,
35 III, IV, or V shall, upon conviction, be deemed guilty of a felony and sentenced to a
36 term of imprisonment for not more than 5 years or a fine of not more than \$15,000, or
37 both. [Any person who has previously been convicted under this paragraph shall be
38 sentenced to imprisonment for not less than 2 years. The prison sentence of a person
39 sentenced under this paragraph as a repeat offender may not be suspended to less
40 than 2 years, and the person may be paroled during that period only in accordance
41 with § 4-305 of the Correctional Services Article.]

1 (c) [(1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
2 of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall
3 be sentenced to imprisonment for not less than 10 years and subject to a fine not
4 exceeding \$100,000 if the person previously has been convicted:

5 (i) Under subsection (b)(1) or subsection (b)(2) of this section;

6 (ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of
7 this section; or

8 (iii) Of an offense under the laws of another state, the District of
9 Columbia, or the United States that would be a violation of subsection (b)(1) or
10 subsection (b)(2) of this section if committed in this State.

11 (2) The prison sentence of a person sentenced under subsection (b)(1) or
12 subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or
13 subsection (b)(2) of this section or any combination of these offenses, as a second
14 offender may not be suspended to less than 10 years, and the person may be paroled
15 during that period only in accordance with § 4-305 of the Correctional Services
16 Article.

17 (3) This subsection does not prevent, prohibit, or make ineligible a
18 convicted defendant from participating in the rehabilitation program under Title 8,
19 Subtitle 5 of the Health - General Article, because of the length of sentence, if
20 imposed under subsection (b)(1) of this section.

21 (d) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
22 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
23 section shall be sentenced to imprisonment for the term allowed by law, but, in any
24 event, not less than 25 years and subject to a fine not exceeding \$100,000 if the
25 person previously:

26 (i) Has served at least 1 term of confinement of at least 180 days in
27 a correctional institution as a result of a conviction of a previous violation of this
28 section or § 286A of this article; and

29 (ii) Has been convicted twice, where the convictions do not arise
30 from a single incident:

31 1. Under subsection (b)(1) or subsection (b)(2) of this section;

32 2. Of conspiracy to violate subsection (b)(1) or subsection
33 (b)(2) of this section;

34 3. Of an offense under the laws of another state, the District
35 of Columbia, or the United States that would be a violation of subsection (b)(1) or
36 subsection (b)(2) of this section if committed in this State; or

37 4. Of any combination of these offenses.

1 (2) Neither the sentence required under paragraph (1) of this subsection
2 nor any part of it may be suspended, and the person may not be eligible for parole
3 except in accordance with § 4-305 of the Correctional Services Article.

4 (3) A separate occasion shall be considered one in which the second or
5 succeeding offense is committed after there has been a charging document filed for
6 the preceding offense.

7 (e) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
8 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
9 section shall be sentenced to imprisonment for the term allowed by law, but in any
10 event, not less than 40 years and subject to a fine not exceeding \$100,000 if the
11 person previously has served 3 separate terms of confinement as a result of 3
12 separate convictions:

13 (i) Under subsection (b)(1) or subsection (b)(2) of this section;

14 (ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of
15 this section;

16 (iii) Of an offense under the laws of another state, the District of
17 Columbia, or the United States that would be a violation of subsection (b)(1) or
18 subsection (b)(2) of this section if committed in this State; or

19 (iv) Of any combination of these offenses.

20 (2) Neither the sentence required under paragraph (1) of this subsection
21 nor any part of it may be suspended, and the person may not be eligible for parole
22 except in accordance with § 4-305 of the Correctional Services Article.

23 (f)] (1) If a person violates subsection (a)(1) of this section and the violation
24 involves any of the following controlled dangerous substances, in the amounts
25 indicated, the person is subject to the penalties provided in paragraph (3) of this
26 subsection upon conviction:

27 (i) 50 pounds or more of marijuana;

28 (ii) 448 grams or more of cocaine or 448 grams or more of any
29 mixture containing a detectable amount of cocaine;

30 (iii) 50 grams or more of cocaine base, commonly known as "crack";

31 (iv) 28 grams or more of morphine or opium or any derivative, salt,
32 isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams
33 or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of
34 morphine or opium;

35 (v) 1,000 dosage units of lysergic acid diethylamide or any mixture
36 containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;

1 (vi) 16 ounces or more of phencyclidine in liquid form or 448 grams
2 or more of any mixture containing phencyclidine; or

3 (vii) 448 grams or more of methamphetamine or any mixture
4 containing 448 grams or more of methamphetamine.

5 (2) For purposes of determining the quantity of a controlled dangerous
6 substance under paragraph (1) of this subsection, the quantity of controlled
7 dangerous substances involved in individual acts of manufacturing, distribution,
8 dispensing, or possessing with intent to distribute may be aggregated if each
9 aggregate act of manufacturing, distribution, dispensing, or possessing with the
10 intent to distribute occurred within a period of 90 days.

11 (3) [(i)] A person convicted of violating paragraph (1) of this subsection
12 is guilty of a felony and shall be subject to a fine not exceeding \$100,000 and shall be
13 sentenced as otherwise provided for in this section[, except that it is mandatory upon
14 the court to impose no less than 5 years' imprisonment, and neither that term of
15 imprisonment nor any part of it may be suspended.

16 (ii) The person may not be eligible for parole except in accordance
17 with § 4-305 of the Correctional Services Article].

18 [(g)] (D) (1) In this subsection, "drug kingpin" means a person who occupies
19 a position of an organizer, supervisor, financier, or manager as a coconspirator in a
20 conspiracy to manufacture, distribute, dispense, bring into, or transport in the State
21 controlled dangerous substances.

22 (2) A drug kingpin who conspires to manufacture, distribute, dispense,
23 bring into, or transport in the State controlled dangerous substances in one or more of
24 the amounts described under subsection [(f)] (C) of this section is guilty of a felony
25 and on conviction is subject to:

26 (i) Imprisonment [for not less than 20 nor more than] NOT
27 EXCEEDING 40 years [without the possibility of parole, and it is mandatory on the
28 court to impose no less than 20 years' imprisonment, no part of which may be
29 suspended]; and

30 (ii) A fine of not more than \$1,000,000.

31 (3) The provisions of § 641 of this article are not applicable to a
32 conviction under this subsection.

33 (4) Notwithstanding any other provision of this subheading, a conviction
34 under this subsection does not merge with the conviction for any offense which is the
35 object of the conspiracy.

36 (5) Nothing contained in this subsection prohibits the court from
37 imposing an enhanced penalty under § 293 of this article. This subsection may not be
38 construed to preclude or limit any prosecution for any other criminal offense.

1 (6) It is not a defense to a prosecution under this section that the
2 controlled dangerous substance was brought into or transported in this State solely
3 for ultimate distribution or dispensing in another jurisdiction.

4 286D.

5 (a) A person who manufactures, distributes, dispenses, or possesses with
6 intent to distribute a controlled dangerous substance in violation of § 286(a)(1) of this
7 subheading, or who conspires to commit any of these offenses, is guilty of a felony if
8 the offense occurred:

9 (1) In, on, or within 1,000 feet of any real property owned by or leased to
10 any elementary school, secondary school, or school board, and used for elementary or
11 secondary education, as defined under § 1-101 of the Education Article, regardless of
12 whether:

13 (i) School was in session at the time of the offense; or

14 (ii) The real property was being used for other purposes besides
15 school purposes at the time of the offense; or

16 (2) On a school vehicle, as defined under § 11-154 of the Transportation
17 Article.

18 (b) [(1)] A person who violates the provisions of this section, on conviction,
19 shall be subject to the following penalties:

20 [(i)] (1) For a first offense, imprisonment for not more than 20
21 years or a fine of not more than \$20,000 or both; or

22 [(ii)] (2) For a second or subsequent offense, imprisonment [for not
23 less than 5 or more than] NOT EXCEEDING 40 years or a fine of not more than
24 \$40,000 or both. [It is mandatory for the court to impose a minimum sentence of 5
25 years, which may not be suspended, and a person is not eligible for parole during that
26 period, except in accordance with § 4-305 of the Correctional Services Article.

27 (2) A sentence imposed under this subsection shall be served
28 consecutively to any other sentence imposed.]

29 (c) Notwithstanding any other provision of law, a conviction arising under this
30 section may not merge with a conviction for a violation of § 286 or § 286C of this
31 subheading.

32 (d) (1) In a prosecution under this section, a map produced or reproduced by
33 any municipal or county agency or department for the purpose of depicting the
34 location and boundaries of the area on or within 1,000 feet of the property of a public
35 or nonpublic elementary or secondary school that is used for school purposes, or a true
36 copy of the map, shall, if certified as a true copy by the custodian of the record, be
37 admissible and shall constitute prima facie evidence of the location and boundaries of

1 the area, if the governing body of the municipality or county has approved the map as
2 an official record of the location and boundaries of the area.

3 (2) A map approved under this section may be revised from time to time
4 by the governing body of the municipality or county.

5 (3) The original of every map approved or revised under this section, or a
6 true copy, shall be filed with the municipality or county and shall be maintained as an
7 official record of the municipality or county.

8 (4) This section does not preclude the prosecution from introducing or
9 relying upon any other evidence or testimony to establish any element of this offense.

10 (5) This section does not preclude the use or admissibility of map or
11 diagram other than the one which has been approved by the municipality or county.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
13 construed only prospectively and may not be applied or interpreted to have any effect
14 on or application to any offenses occurring before the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2001.